Before Nov. 4

14 October 1994

Memo to: Board
From: Tano
Re: MWEC rights

Since mid-July the crisis has forced us to put aside all efforts to develop the film/tv/electronic opportunities for MWEC. (Indeed, I've had to put aside *all* other endeavors...) It is now urgent that we proceed immediately. A little background may be useful here:

In June of 1993 I contacted Howard and inquired about the film/tv rights for MWEC. He said there were no commitments and invited me to meet and discuss my ideas. We met and spoke several times in June and July, and ultimately I was directed to submit a proposal to John Sumser, then just arriving. After several drafts and discussions, an agreement for LEGACY MEDIA, INC. to have the film/tv rights to MWEC was executed on August 24, 1993. A requirement of the agreement was that LEGACY commence filming within six months; that requirement was satisfied on December 3, 1993.

LEGACY initiated discussions with several leading film distributors. I described these discussions to John: there was strong interest from all of the likely leading distributors for a television film or series, and they all also expressed interest in electronic versions, but only in conjunction with a television version. The consistently articulated view was that the tv exposure added considerable value to any electronic version (promotional effect and access to footage), and that it made sense both cost-wise and style-wise to develop these two arenas in concert; in short, there was little interest in electronic *without* tv). At the same time we both felt that it was essential that POINT have editorial control of any electronic version of MWEC. With all that in mind, I proposed to John that LEGACY, as the holder of the film/tv rights already (and as such in contact with the largest of the likely buyers), be the agent on behalf of POINT with regard to electronic rights, reserving for POINT ownership of those rights with final authority for any agreement and for editorial control. He agreed and I summarized this in a memo to him on June 6, 1994.

We had also agreed that point needed legal advice for this new realm of activity and discussions were initiated with the leading intellectual property rights law firm in New York—FRANKFURT, GARBUS, KLEIN, & SELZ. (They represent several of my friends including Milton Glaser, Peter Mayer, and Peter Matthiessen, and I was able to meet with senior partners there for several hours at no charge.) They outlined some of the key issues for POINT to attend to, including trademark protection for the new arenas, clearance of rights to content in MWEC, and solidification of all rights agreements. They proposed a limited engagement agreement which was executed by John on June 24, 1994. They then initiated a trademark search and prepared several documents, including a series of trademark applications and restated versions of the two agreements with LEGACY. (From the very beginning of these discussions, we realized that my dual role needed clarification and had to be addressed in a formal way. Counsel addressed the issue by drafting appropriate documents endorsed by both John and me.)

The trademark applications have been filed and the agreements now need to be executed. Once these are in hand, I will be able to reactivate the conversations with distributors and will then devote most of my time to securing financing for the film and soliciting proposals for electronic rights with the best possible (and most immediate) benefits to POINT. With MWEC set to be launched, there will be no better opportunity for us to attract interest in these other arenas, but we must act quickly. A motion to authorize Peggy to execute the final agreements is required. (All pertinent documents are attached. Peggy should perhaps speak with our lead counsel, Jaime Wolf, if any clarification is needed.)

(associate for
202-826-5568

26 October 1994/via fax: page one of three

Memo to: Peggy Lauer
From: Tano
Re: MWEC rights agreements/Barsocchini memo

First let me say that I appreciate the expeditious way that Jerry responded to my request to the Board to review documents relating to film and electronic rights to MWEC. We all recognize the urgency we face in maximizing the opportunity for POINT created by the completion and release of MWEC, given the limited time that the book will be given national attention.

It was with that in mind over a year ago that I approached Howard with the idea of creating a television film based on the then-planned *Catalog*, and with that in mind that John, then Executive Director of POINT, negotiated and executed a contract with LEGACY to allow that to happen. I was not at that time connected in any way with POINT, and the August 24, 1993 agreement is the basis of significant expenditure of time and money on LEGACY's part over the past year, including the filming of events at POINT on December 3, 1993 (which satisfied the requirement in that contract for continued exclusivity of the film rights—only if *both* filming *and* financing did *not* materialize would the exclusivity be lost). Since January of this year LEGACY has been in discussion with several major production/distribution firms who have expressed interest in developing and financing the film version, and were it not for the protracted difficulties at POINT since July, would have secured an agreement already. As it is, discussions have been renewed, and subject to the formalization of the existing agreement, will be pursued in earnest once again. This contract is already in effect, however, and is not affected by the issues raised by the Barsocchini memo (In any event, I was not then nor, for that matter, am I now, a stockholder of LEGACY.). It is possible, however, that some of the legal expense can be allocated to LEGACY, and that should properly be discussed between the parties. (We could just have Jaime Wolf do a breakout for us.)

When John asked me to join the Board in November 1993, I had already been visiting the offices regularly doing research for the film, and had many occasions to discuss non-film related questions he raised with me. It was clear that he was overwhelmed, and inexperienced with publishing and with not-for-profits, and I agreed to volunteer and help as a member of the Board. I have

continued to serve through the difficulties of the past several months at no little financial detriment to myself and my family, as I did no work but Board work from July 15th to the beginning of this month. (I even had to relinquish a contract to edit a book that I had personally developed for *Tricycle* at Putnam because its deadline conflicted with Board responsibilities in August and September.) *It would be ironic in the extreme* if I was penalized further because of my willingness to help POINT.

I think you all know me well enough to recognize that I would never knowingly do anything to place POINT or any of you, my colleagues, at financial or legal risk. My proposal to John back in June to have LEGACY represent POINT for electronic rights was made in good faith in the interests of creating the greatest possible benefit for POINT in the shortest possible time (John communicated very clearly that he wanted to generate as much income as possible as quickly as possible); John agreed to allow LEGACY to so represent itself and immediately directed parties to me who had approached him on the subject. Given the immediacy of the problem, we did not formalize this understanding beyond my memo to him of June 6, assuming that we would develop the details as soon as counsel was retained to look at rights, marks, and agreements. Counsel was engaged by John but John was *dis*engaged very soon thereafter, and all of our attention was focused on the crisis. I apologize for not being able to assemble all of this for review earlier, but, quite frankly, I think we all know that we as a Board have not even kept up with the basics of managing POINT since July. There is much still to be done on many fronts.

Regarding the issues raised by Barsocchini, I suggest that the electronic rights agreement will meet the tests per CC 5233(D)(2) (assuming it applies) if we sit down and go over it all carefully together. I can assure you Jaime Wolf crafted the agreement as counsel to POINT with scrupulous attention to fairness and simplicity. Although it fell to me, per John, to work on this on behalf of POINT, I always deferred to Jaime's judgement with regard to issues that might have an effect on LEGACY. There may, however, be business points that could bear discussion in this agreement and we should address that issue together as well.

I think Barsocchini's concerns are sincere and well intentioned (indeed, as a Board member I have been outspoken about clarity, formality, and discipline), but I believe that, with study (and

perhaps some clarifications), you will agree that there will be no risk to POINT or to any of us as directors with regard to the agreements, and that they will serve POINT well in its desire to develop new and bigger audiences for its work.

I propose that we convene a meeting of the Board on Friday, October 28th, at 7pm, at POINT (or anywhere that's convenient) to discuss this and the other urgent matters I listed in my memo of October 24th. Please confirm that this is acceptable as soon as possible as I will have to reschedule a previous engagement for that evening. Thanks again for all your efforts.

Bd stm acknowledging potential conflict of interest & waive under circumstances as it meets the test.

October 30, 1994

To: Board of Directors
From: Peggy
RE: MWEC rights agreement

As per a request from Tano, I polled the other two board members with regard to the electronic and movie rights to Legacy of MWEC and other products. This was completed by Saturday, October 22. Jerry stated that as a board member, he could not authorize the signing of the contract without a written opinion by his counsel. Both Jerry and Beau, and I concurred that the extent to the rights was not understood, and there was concern with regard to a potential conflict of interest, as well as the possibility of this situation appearing as self-dealing on the part of Tano.

As Tano suggested, I called Point's legal counsel on this matter, Jaime Wolf, of Frankfurt, Garbus, Klein & Selz. He answered some questions, here are others.

Re: Retainer and Fee Agreement
What kind of money was expended? Does it include your salary and others? You spent all time since July on Point stuff, except for the work on the contract itself, and the trademark papers. How is this broken down as far as costs, and your time?

Retainer of $5,000 put out by Point. Some of this was expended on rights agreement. Point shouldn't pay for that. We have not seen Wolf's monthly bill.

✓ Re: Millenium Whole Earth Catalog Conflict of Interest Letter
Did either Tano/Legacy or John seek independent counsel with respect to possible conflict of interest and having same law firm represent both?

✓ Re: Motion Picture Rights Agreement
Section. 1, page 1: Grant of Rights
All motion picture, television and allied rights granted to Legacy, solely, exclusiviel, in perpetuity and throughout the universe. What are allied rights?

catchall phrases to use of media

✓ Same paragraph: says that the publication kknown as the Whole Earth Catalog, including all past and future versions will be granted to Legacy. What of this? Other catalogs as well as MWEC are affected. For this purpose or any purpose. For what reason would Point sign these over this way?

*/Jaime make it more specific about MWEC.

(Albert B.)
12/11/94

Contract

4. Representation + Warranties

5. Indemnity

11. Waiver of Conflict

who is Legacy? where is Legacy?

Toni's Contract w/ Legacy

Letterhead

31 October 1994/via fax: one page only

Memo to: Board
From: Tano
Re: MWEC rights agreements/JG memo

In response to Jerry's memo of today and as a basis for further discussion I'd like to clarify several misapprehensions that may be clouding the issues:

• As to the continuing exclusivity of the film rights agreement, please refer to the signed contract of August 24, 1993: "Should LEGACY, six months (i.e. January 1994), *not* have commenced filming *and* *not* have obtained a commitment for funding/ broadcast, the exclusivity of these rights will be terminated." *Both* must *not* have occurred for the change in status; since the filming did commence (on December 3rd), the status remains (i.e., exclusivity of the film rights). This agreement is in effect and the new version is just a restatement and formalization.
• I think a discussion about the relative merits of exclusivity/ non-exclusivity will effectively clarify that issue
• As you know, I'm absolutely in agreement with appropriate allocation of the legal expenses; I already suggested that Jaime Wolf be asked to do a breakout for just that purpose.
• With regard to my position at LEGACY, I am not a stockholder there and that is to the benefit of the discussions regarding possible conflicts. I am one of its independent producers and in fact the August 24th contract requires that I remain a producer for the Whole Earth project regardless of any possible future assignments of the agreement; POINT was and remains assured (contractually) of my direct personal involvement through the entire process.

ATT: PEGGY LAUER

SEE YOU TOMITE

31 October 1994/via fax: one page only

Memo to: Board
From: Tano
Re: MWEC rights agreements/JG memo

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ALBERT BARSOCCHINI

ATTORNEY AT LAW

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albert@legalnet.com

December 7, 1994

Gaetano Kazuo Maida
Legacy Productions
2550 Ninth Street
113-B
Berkeley, CA 94710-2552

RE: Motion Picture Rights Agreement

Dear Mr. Maida:

As you know, three members of the board of directors of the Point Foundation have asked me to finalize with you the proposed film rights agreement and issues surrounding it.

I have read the amended version dated 11/17/94 and have only three comments. 1. The term "catalog" and "all versions" needs to be specifically defined so there is no ambiguity. From reading the original August 24, 1993 agreement between Point and Legacy, the film rights are only for the *Millennium Whole Earth Catalog*. Any subsequent publications such as the proposed Whole Earth Guides, would not be included. 2. I need you to produce any and all agreements between Legacy and you so that Point fully understands your involvement and so that it can be put on the record (you can fax me the agreements). 3. The amended agreement also added something new that was not in the original agreement, to wit, "point will not have any right of approval". The board needs to specifically agree to that before it can be included. We should be able to finalize this before the board meeting this Saturday.

Please call me after you have faxed all agreements between you and Legacy.

Sincerely,
[dictated but not read]
Albert Barsocchini

LEGACY PRODUCTIONS

8 December 1994/via fax: one page only

Albert Barsocchini
ATTORNEY AT LAW
4 Blackhawk
San Anselmo, CA 94960

Re: POINT FOUNDATION

Dear Albert:

I received the draft of the revised Motion Picture Rights Agreement today. As requested, my comments, on the draft itself and on your notes of yesterday, are:

•re: Article 7 (new section)—the word "sole" is inappropriate and should be deleted; a reversion provision would have to be limited with regard to time (i.e., practically speaking, if I cease to be the creative "executive" before the film is produced it's one thing; during or after, quite another); there would then also have to be a formula for compensation if POINT exercises a reversion under this provision; (basically this should be in conformance with the elements under Assignment—as it stands, this is an open invitation to arrange for my demise in the event a more attractive offer comes along...just kidding, but you know what I mean)
•re: Article 11 (new section)—same issue with "sole"
•re: Article 1 (your comments)—the intention is to protect all parties from the confusion and complications that would arise if another book with *Whole Earth Catalog* (*Millennium* or otherwise) as its title is subsequently published (within a reasonable time frame); there would be no problem with something titled "Whole Earth Guides," and there is no intention to compromise any rights that may be created with such (a) title(s).
•re: Article 7 (your comments)—the original agreement says "(LEGACY) shall be solely responsible for the content;" the amended version merely makes explicit what was implicit.

I look forward to your thoughts.

Yours truly,

Gaetano Kazuo Maida
Producer

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December 8, 1994

Gaetano Kazuo Maida
Legacy Productions
2550 Ninth Street
113-B
Berkeley, CA 94710-2552

RE: Motion Picture Rights Agreement

Dear Mr. Maida:

1. To complete my records I still need you to fax me the memo from Legacy re your relation to Legacy in regard to the film rights. This document will be incorporated into the film rights agreement by reference;

2. I have your comments and will now try to make some adjustments to the proposed contract. I have scanned the film rights agreement into my word processor and will have a live copy for your consideration before Sunday;

3. The other issue the board wanted me to follow up on was the apportionment of attorney fees from Frankfurt, Garbus, Klein & Selz. The most expeditious way to handle this is for you to check off line by line the work product that Legacy is willing to pay for and then fax me the bills for my review.

Sincerely,

Albert Barsocchini

To: Ruth
From: Mike, 12/9/94

Re: Income Report

Great News! Money is coming in as fast as we can account for it. The business office is wonderfully overwhelmed. since returns began coming in from the end-of-year letter sent by staff to subscribers.

I apologize for not yet having a more detailed report, but we have put all of our efforts into trying to (1) get the income deposited and (2) get book orders sent as quickly as possible. We've added temporary staff and are utilizing as many volunteers as we can, but we're still paddling as hard as we can to process these. The good news is, this won't last forever. The bad news is, this won't last forever.

Deposits this week:

Wednesday:	$ 3,261.87	credit cards
	$ 6,433.84	checks
Friday:	$ 9,500.20	credit cards
	$21,548.77	checks

Total for Week: $40,744.68

See attached breakdown. As you can see, most of this is from phone sales and end-of-year responses since they began to arrive 1 1/2 weeks ago. About 500 end-of-year responses have been opened and money deposited so far. *We have an additional 400 end-of-year letters — mostly arrived since Wednesday — yet to be processed.*

Additionally, I sold 225 MWECs today to Odwalla Beverages for $24 each for distribution to their employees as holiday gifts:

225 @ $24 = $5400. Harper is drop-shipping them directly to Odwalla, so we will not need to pay the $1.50 handling and $3.00-$4.50 postage to A & A Shipping. That makes the net to us more than $3,000.

25m - MWEC

10m WER

40,000 end of year + still thru